courts that the principle underlying decisions of this nature is the well known rule of damages that due care must be exercised in keeping the damages as low as possible. In the application of this rule, however, it does seem that *Lawrence* v. *Porter* has gone too far, for surely it is anything but reasonable to ask a vendee to accept an offer of his vendor after the latter has refused to carry out the previous agreement. The mere fact that the goods could not have been obtained elsewhere does not lessen the unreasonableness of the conclusion reached in the case. The decisions in the State courts involving the same facts as *Lawrence* v. *Porter,* and also those in the Federal courts in which the application of *Lawrence* v. *Porter* has been refused, are more in accord with the rule as well as with the seeming justice of the matter. As for the three cases cited, in each of which it would have been beneficial to the obligor if the other party to the contract had accepted the offer made after the breach, the courts evidently lost sight of the beneficial doctrine, although they did reach conclusions that cannot be challenged. The difficulty which is to be found in every case of this nature is based upon what is meant by "reasonable diligence," for if the exact meaning of the word "reasonable" can once be decided, it would be easy enough to apply the facts in the case at hand and arrive at a just conclusion. A. E. M.

LIMITATION OF THE AMOUNT OF A CARRIER'S LIABILITY.—Plaintiff shipped by express a carload of automobiles and appurtenances, valued at more than $15,000. The bill of lading contained the terms, usually found in express receipts, providing that the company should not be liable for any loss not proved to have been caused by the fraud or gross negligence of the company or its servants; nor in any event beyond the sum of fifty dollars unless a different value was thereinbefore stated. The goods were fully described in writing with the additional statement "Value asked and not declared." Plaintiff had been accustomed to put a valuation upon shipments, but had changed his practice in order to secure a lower carrying charge. In an action for the full value a judgment for $50 was rendered. Plaintiff brings error. Judgment below affirmed. *George N. Pierce Co.* v. *Wells Fargo & Co.,* 189 Fed. 561.

This case goes the full length of upholding stipulations limiting the amount of the carrier's liability for loss or damage to goods shipped. If goods worth $15,000, described in writing as a carload of automobiles and appurtenances, whose value the carrier must have known to be not $50, but many thousands of dollars, can be valued at $50 in consideration of a reduced carrying charge, then in consideration of further reduction the value, as is said by NOYES, J., in his dissenting opinion, might have been put at a penny. And if that may be done it is difficult to see why the doctrine of the *Lockwood* case, 17 Wall. 357, has not been wholly nullified. Indeed the present case goes far to work such a nullification, for a recovery of $50 for goods known to be worth $15,000 is really no recovery at all. Furthermore, if it be held not only that it is competent for the shipper to release the carrier from $14,950 of his liability in return for a lower carrying charge, but also that

"it would be in the highest degree violative of public policy to permit a shipper who has benefited by the valuation he has deliberately agreed upon to repudiate his agreement and recover against the carrier on a higher valuation," then certainly it should be competent to release him from the last $50 of liability, and it is equally against public policy to allow a shipper to take advantage of a rate based on an agreement to wholly excuse the carrier, to take such benefit and then repudiate the agreement and recover the full value of the goods. That agreements of this last sort are wholly void, and clearly against public policy, is as firmly established as any rule of law. Why is not the contract in the present case equally null and void? The case is entirely different when the carrier has no knowledge that the value is really greater than the amount stipulated. That was the fact in the *Hart* case, 112 U. S. 331, which was relied upon as authority in the present case, and which is the leading case upon this point. For a review of the recent cases, accord and contra, upon this question, see 9 MICH. L. REV., 233. See also 8 MICH. L. REV., 531. The present case so clearly makes issue of the disputed point that it is to be hoped it will be carried to the United States Supreme Court for an authoritative pronouncement of the limits of the rule in the *Hart* case. It is interesting to note, incidentally, that the court found nothing against public policy in the stipulation against losses not proven to be due to gross negligence, for the reason that the Federal courts recognize no difference between gross and ordinary negligence. The express companies must expect that many shippers will not understand this, and so will be deterred from suing when the carelessness of the carrier cannot be proved to be particularly aggravated, or they would cease to use this language, and would conform to the phraseology of the Uniform Bill of Lading approved by the Interstate Commerce Commission, and now in general use by other carriers. There will be general agreement with the Interstate Commerce Commission, *Matter of Released Rates,* 13 Int. State Com. Com. R. 565, that it is a mischievous practice for carriers to publish on their bills of lading rules which are misleading, unreasonable, or incapable of literal enforcement in a court of law, and that it is a practice that results in a great and unfortunate irritation between the carrier and the shipping public. While there are cases holding that, in carriage by rail, any negligence may well be called gross, there are many other cases recognizing a distinction between slight, ordinary and gross negligence. See the leading cases, *New Jersey Steam Navigation Company* v. *Merchants' Bank,* 6 How. 343; *Philadelphia and Reading R. Co.* v. *Denby,* 14 How. 486. And it has been held that a stipulation like the one in the principal case, limiting liability to losses due to gross negligence, is invalid as much as though it had been a contract for a total exemption from liability. See 8 MICH. L. REV., 547 and cases cited. E. C. G.